

refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under § 502.311 and will be adjudicated under subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decision shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the deci-

sion. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

[49 FR 44369, Nov. 6, 1984, as amended at 59 FR 59170, Nov. 16, 1994]

§ 502.305 Applicability of other rules of this part.

Except as specifically provided in this subpart, the Rules in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 305.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

EXHIBIT NO. 1 TO SUBPART S [§ 502.304(a)]—SMALL CLAIM FORM FOR INFORMAL ADJUDICATION AND INFORMATION CHECKLIST

Federal Maritime Commission, Washington, DC.

Informal Docket No. _____

(Claimant)

vs.

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in subpart S (46 CFR 502.301–502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

(Date)

(Claimant's signature)

(Claimant's address)

(Signature of agent or attorney)

(Agent's or attorney's address)

Verification

State of —, County of —, ss: —, being first duly sworn on oath deposes and says that he or she is

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of —, County of —, this — day of — 19—. (Seal)

(Notary Public)

My Commission expires, —

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of \$10,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to subpart S], the claim will be adjudicated by an administrative law judge under subpart T of Part 502.

Under the Shipping Act of 1984 [for foreign commerce], the claim must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of claimant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the claim must be filed within two (2) years from the time the cause of action accrues and may only be brought against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

A violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a verification must be included. (See §§502.21–502.32, 502.112, and 502.304.) An original and two (2) copies of the claim *and all attachments*, including a brief in support of the claim, must be submitted.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990]

Federal Maritime Commission

§ 502.316

EXHIBIT NO. 2 TO SUBPART S [§ 502.304(e)]—RESPONDENT'S CON- SENT FORM FOR INFORMAL ADJU- DICATION

Federal Maritime Commission, Washington, DC.

Informal Docket No. ———

Respondent's Affidavit

I authorize the Settlement Officer to deter-
mine the above-numbered claim in accord-
ance with subpart S (46 CFR 502) of the Com-
mission's informal procedure for adjudica-
tion of small claims subject to discretionary
Commission Review.

(Date) —————

(Signed) —————

(Capacity) —————

Verification

State of ———, County of ———, ss: ———,
being first duly sworn on oath deposes and
says that he or she is ———, (Title or Posi-
tion) and is the person who signed the fore-
going and agrees without qualification to its
truth.

Subscribed and sworn to before me, a no-
tary public in and for the State of ———,
County of ———, this — day of ———, 19—

(Seal)

(Notary Public)

My Commission expires. —————

Certificate of Service [See § 502.320]

Subpart T—Formal Procedure for Adjudication of Small Claims

§ 502.311 Applicability.

In the event the respondent elects
not to consent to determination of the
claim under subpart S of this part, it
shall be adjudicated by the administra-
tive law judges of the Commission
under procedures set forth in this sub-
part, if timely filed under § 502.302. The
previously assigned Docket Number
shall be used except that it shall now
be followed by capital "F" instead of
"T" in parentheses (See § 502.304(c)).
The complaint shall consist of the docu-
ments submitted by the claimant
under subpart S of this part. [Rule 311.]

§ 502.312 Answer to complaint.

The respondent shall file with the
Commission an answer within twenty-

five (25) days of service of the com-
plaint and shall serve a copy of said an-
swer upon complainant. The answer
shall admit or deny each matter set
forth in the complaint. Matters not
specifically denied will be deemed ad-
mitted. Where matters are urged in de-
fense, the answer shall be accompanied
by appropriate affidavits, other docu-
ments, and memoranda. [Rule 312.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4,
1984]

§ 502.313 Reply of complainant.

Complainant may, within twenty (20)
days of service of the answer filed by
respondent, file with the Commission
and serve upon the respondent a reply
memorandum accompanied by appro-
priate affidavits and supporting docu-
ments. [Rule 313.]

§ 502.314 Additional information.

The administrative law judge may re-
quire the submission of additional affi-
davits, documents, or memoranda from
complainant or respondent. [Rule 314.]

§ 502.315 Request for oral hearing.

In the usual course of disposition of
complaints filed under this subpart, no
oral hearing will be held, but, the ad-
ministrative law judge, in his or her
discretion, may order such hearing. A
request for oral hearing may be incor-
porated in the answer or in complain-
ant's reply to the answer. Requests for
oral hearing will not be entertained un-
less they set forth in detail the reasons
why the filing of affidavits or other
documents will not permit the fair and
expeditious disposition of the claim,
and the precise nature of the facts
sought to be proved at such oral hear-
ing. The administrative law judge shall
rule upon a request for oral hearing
within ten (10) days of its receipt. In
the event an oral hearing is ordered, it
will be held in accordance with the
rules applicable to other formal pro-
ceedings, as set forth in subparts A
through Q of this part. [Rule 315.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4,
1984]

§ 502.316 Intervention.

Intervention will ordinarily not be
permitted. [Rule 316.]